



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contract Services Company, Inc.

File: B-225651

Date: May 18, 1987

DIGEST

Contracting officer's rejection of protester's low bid in Office of Management and Budget Circular No. A-76 procurement on the basis that bid contained a mistake was premature where: (1) protester immediately and consistently verified that its bid price was not mistaken, (2) there is no evidence in the record that bid contained a mistake, and (3) protester's low bid was not so low as to make it unconscionable for government to award contract to protester. Agency should request protester to provide sufficient explanation and/or documentation to assure contracting officer that bid as confirmed is without error and that protester sufficiently understands the scope and nature of the work to be found responsible.

DECISION

Contract Services Company, Inc. (CSC), protests the determination made by the United States Coast Guard pursuant to Office of Management and Budget (OMB) Circular A-76 to continue to perform certain maintenance and repair services in-house rather than to contract for them. CSC alleges that the Coast Guard improperly rejected the bid CSC submitted in response to a solicitation issued for the services and, consequently, improperly conducted the required A-76 cost analysis by comparing the cost of performance by government personnel to the next lowest bid, which was substantially higher than CSC's bid. We sustain the protest.

In order to determine whether it would be more economical to perform maintenance and repair services at the Coast Guard Support Center and at the Coast Guard Enlisted Housing Area, both at Elizabeth City, North Carolina, the Coast Guard issued invitation for bids (IFB) No. DTCG23-86-B-60006, a total small business set-aside, on October 21, 1986. The IFB solicited firm, fixed-price bids for a base period and for four 1-year option periods, and provided that for purposes of

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award the bids would be evaluated by adding the total price for all options to the price for the base requirement. The invitation also provided that a cost comparison would be conducted in accordance with OMB Circular A-76 to compare the total price of the lowest responsible bidder to the government's estimate (submitted in the form of a bid) of the cost to do the work in-house using the most efficient organization.

Eleven bids (including the government's estimate for in-house performance), ranging from a low bid of \$1,500,000 to a high bid of \$22,429,089, were received in response to the IFB. CSC's bid was the second low one at a total price of \$5,643,144.50, and the government's in-house performance bid was for a total cost of \$9,794,615. There is no indication in the record as to why the low bid of \$1,500,000 was rejected, although it appears that it may have been either nonresponsive or unbalanced. In any event, the contracting officer initially determined that CSC was the lowest-priced, responsive, responsible bidder, and CSC was notified that its bid would be compared to the government's bid to determine if a contract would be awarded. The contracting officer also notified CSC that its bid was so much lower than the other bids and the government's estimate that a mistake in the bid was indicated, and CSC was requested to verify its bid. By letter of December 18, CSC responded that it had reviewed its estimate and verified that the original bid was "accurate and without mistake."

By letter of December 22 the contracting officer rejected CSC's bid and stated,

"Please be advised that, in spite of your verification, I can not accept your bid inasmuch as it is so far out of line with all the other bids received (including the Government's) that acceptance would be unfair to you and to the other bona fide bidders. . . . Accordingly, I must disregard it."

Accordingly, the Coast Guard proceeded to perform the A-76 cost comparison using the next lowest bid of \$8,851,336 for comparison purposes. This cost analysis resulted in a determination that it was more economical--by \$378,577--to continue to perform these maintenance and repair services using government personnel.

CSC protested the rejection of its bid to the Coast Guard, stating that,

"Our company has neither refused or failed to furnish evidence [in support of an alleged mistake in bid] because we did not make a mistake in our bid and have verified this to you in our 17 December letter."

The Coast Guard denied CSC's protest on January 5, 1987, and, by letter of January 9, notified all bidders that it had decided to retain these functions in-house with continued performance by military and civilian personnel. CSC protested to our Office on January 21.

The Coast Guard contends that CSC's bid was properly rejected under the authority of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(g)(5) (1986), which provides that where a bidder fails or refuses to furnish evidence in support of a suspected mistake, the contracting officer shall consider the bid as submitted, unless (1) the amount of the bid is so far out of line with other bids received or the government estimate or (2) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or other bona fide bidders.

The protester argues that the cited section of the FAR expressly provides authority to reject a bid only "where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake." CSC points out that it has repeatedly stated there is no mistake in its bid, that it has verified its price as requested, and that it will waive any claim based upon an alleged mistake in its bid. The protester also contends that the contracting officer essentially does not believe that CSC can perform the required work at the bid price. Accordingly, the protester argues that the rejection of its bid amounts to a de facto negative determination of its capability to perform the work at this price which should be referred to the Small Business Administration for review under its certificate of competency procedures in accord with 15 U.S.C. § 637(b)(7) (1982).

Where a contracting officer has reason to believe that there is a mistake in a bid, the contracting officer must point out the suspected mistake to the bidder and request that the bidder verify the bid. FAR, 48 C.F.R. §§ 14.406-1 and 14.406-3(g)(1). Generally, if the bidder verifies its bid, the contracting officer is to consider the bid as originally submitted. See R.P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 C.P.D. ¶ 39; FAR, 48 C.F.R. § 14.406-3(g)(2). As the Coast Guard points out, however, if the actual prices bid are

such that an award will result in the government's obviously getting something for nothing, it would be unconscionable for the government to accept the bid. See Handy Tool & Mfg. Co., Inc., 60 Comp. Gen. 189 (1981), 81-1 C.P.D. ¶ 27.

In our opinion, the contracting officer's rejection of CSC's low bid was premature, since CSC immediately responded to the contracting officer's verification request by confirming that its original bid was accurate and without mistake and since then consistently has reaffirmed that position. While the contracting officer could have requested substantiation from CSC that the bid as submitted was without error, he, in fact, did not do so. See C.W.R. Construction, Inc., B-224301, Dec. 2, 1986, 86-2 C.P.D. ¶ 629 at 5; K&P Inc., et al., B-212263 et al., Oct. 11, 1983, 83-2 C.P.D. ¶ 436 at 4. We note in this regard that CSC's initial verification letter specifically indicated that the firm was willing to supply further information if requested. Because the contracting officer still believed CSC's bid to be mistaken in spite of CSC's verification, we believe the firm should have been requested to provide a sufficient explanation and/or appropriate documentation (for example, worksheets) to assure the contracting officer that the bid as confirmed is correct.

We appreciate a contracting officer's concern about accepting what he may view as a questionable bid in an A-76 procurement such as this since, in contracting for the work, the agency will have to dismantle the in-house work force that previously had been doing the work and it would be difficult and costly to reassemble the in-house activity should the contractor prove unable to perform properly at its contract price. We believe, however, that an agency is in a good position to determine, without much difficulty, whether an error in fact has been made once it gets the documentation from the bidder, inasmuch as the agency has already analyzed the various cost elements of the work in computing its own estimate of the cost to have the work performed in-house by its most efficient organization.

The Coast Guard argues that award to CSC would be unconscionable because the bid is so low that the government will be getting something for nothing. While the Coast Guard cites several of our previous decisions as supporting this proposition (Yankee Engineering Co., Inc., B-180573, June 19, 1974, 74-1 C.P.D. ¶ 333; 53 Comp. Gen. 187 (1973); 45 Comp. Gen. 305 (1965)), we point out that in each of the cited cases the contractor claimed that a mistake had been made in its original bid and there was sufficient evidence in the

record to corroborate the allegation of mistake. This is simply not the case here where CSC vehemently denies that a mistake occurred and, other than CSC's low price, there is absolutely no evidence that the bid was mistakenly too low.

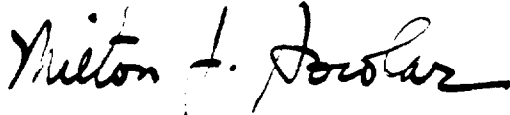
The Coast Guard also cites our decision in William M. Young & Co., B-188374, Apr. 18, 1977, 77-1 C.P.D. ¶ 271, in which we allowed reformation of a contract based on a claim for mistake even though the original bid had been verified before award. The Coast Guard argues that the decision illustrates the difficult position a contracting officer is put in where he suspects a verified low bid is mistaken if his alternative to rejecting it is to accept the bid and risk reformation of the contract price after award. We note, however, that in Young, the low bidder claimed that it had made an error and produced worksheets that supported its mistake claim. We also pointed out in Young that a contracting officer has a duty to request a satisfactory explanation of a large discrepancy between the low bid and the next low bid if, notwithstanding the bidder's verification, he still suspects a mistake has been made, and we stated that recovery based on a subsequent claim of mistake would be precluded if the contracting officer reasonably accepted the bidder's explanation. Here, of course, the contracting officer did not seek that further explanation.

Concerning CSC's argument that the Coast Guard has, in effect, made a de facto determination that CSC is not responsible, the Coast Guard argues that the rejection was based only on a perceived bidding mistake and unconscionability, and that no negative inference as to CSC's responsibility should be drawn therefrom. In view of the Coast Guard's position, and since we think CSC's bid should be considered, we need not consider this matter. In this regard, we have consistently held that a low priced bid--even a below cost bid--is not a legal impediment to award so long as the bidder is determined to be responsible. See K&P Inc., et al., B-212263 et al., supra, at 5.

In view of the above, we think that since the contracting officer was concerned about CSC's lower price despite the verification, he should have requested the bidder to substantiate its bid, as we suggested in Young. We therefore find that the Coast Guard prematurely rejected CSC's bid and performed a faulty OMB Circular A-76 cost comparison as a result. In view of the fact that CSC's bid is more than \$4 million lower than the government bid, it is clear that it will be less costly to contract with CSC for the required services than to continue to have the work performed by government personnel if CSC's bid price is accurate.

Accordingly, by separate letter to the Secretary of Transportation, we are recommending that the Coast Guard request that CSC provide a sufficient explanation with appropriate documentation, as necessary, to assure the contracting officer that the bid as verified is without error and to ascertain whether CSC sufficiently understands the scope and nature of the work to be found responsible. If the bid is ultimately found to be correct and CSC is found to be responsible, then the contract should be awarded to CSC.

The protest is sustained.



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